



National Highway Traffic Safety Administration

Petition for Exemption from the

Federal Motor Vehicle Theft Prevention Standard; BMW of North America, LLC

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the BMW of North America, LLC's (BMW) petition for exemption from the Federal Motor Vehicle Theft Prevention Standard (theft prevention standard) for its Toyota Supra vehicle line beginning in model year (MY) 2022. The petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the theft prevention standard. BMW also requested confidential treatment for specific information in its petition. Therefore, no confidential information provided for purposes of this notice has been disclosed.

DATES: The exemption granted by this notice is effective beginning with the 2022 model year.

FOR FURTHER INFORMATION CONTACT: Carlita Ballard, Office of International Policy, Fuel Economy, and Consumer Programs, NHTSA, West Building, W43-439, NRM-310, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590. Ms. Ballard's phone number is (202) 366-5222. Her fax number is (202) 493-2990.

SUPPLEMENTARY INFORMATION

Under 49 U.S.C. Chapter 331, the Secretary of Transportation (and the National Highway Traffic Safety Administration (NHTSA) by delegation) is required to promulgate a theft prevention standard to provide for the identification of certain motor vehicles and their major replacement parts to impede motor vehicle theft. NHTSA promulgated regulations at part 541

(theft prevention standard) to require parts-marking for specified passenger motor vehicles and light trucks. Pursuant to 49 U.S.C. 33106, manufacturers that are subject to the parts-marking requirements may petition the Secretary of Transportation for an exemption for a line of passenger motor vehicles equipped as standard equipment with an antitheft device that the Secretary decides is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements. In accordance with this statute, NHTSA promulgated 49 CFR part 543, which establishes the process through which manufacturers may seek an exemption from the theft prevention standard.

49 CFR 543.5 provides general submission requirements for petitions and states that each manufacturer may petition NHTSA for an exemption of one vehicle line per model year. Among other requirements, manufacturers must identify whether the exemption is sought under section 543.6 or section 543.7. Under section 543.6, a manufacturer may request an exemption by providing specific information about the antitheft device, its capabilities, and the reasons the petitioner believes the device to be as effective at reducing and deterring theft as compliance with the parts-marking requirements. Section 543.7 permits a manufacturer to request an exemption under a more streamlined process if the vehicle line is equipped with an antitheft device (an “immobilizer”) as standard equipment that complies with one of the standards specified in that section.

Section 543.8 establishes requirements for processing petitions for exemption from the theft prevention standard. As stated in section 543.8(a), NHTSA processes any complete exemption petition. If NHTSA receives an incomplete petition, NHTSA will notify the petitioner of the deficiencies. Once NHTSA receives a complete petition the agency will process it and, in accordance with section 543.8(b), will grant the petition if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of part 541.

Section 543.8(c) requires NHTSA to issue its decision either to grant or to deny an exemption petition not later than 120 days after the date on which a complete petition is filed. If NHTSA does not make a decision within the 120-day period, the petition shall be deemed to be approved and the manufacturer shall be exempt from the standard for the line covered by the petition for the subsequent model year.¹ Exemptions granted under part 543 apply only to the vehicle line or lines that are subject to the grant and that are equipped with the antitheft device on which the line's exemption was based, and are effective for the model year beginning after the model year in which NHTSA issues the notice of exemption, unless the notice of exemption specifies a later year.

Sections 543.8(f) and (g) apply to the manner in which NHTSA's decisions on petitions are to be made known. Under section 543.8(f), if the petition is sought under section 543.6, NHTSA publishes a notice of its decision to grant or deny the exemption petition in the Federal Register and notifies the petitioner in writing. Under section 543.8(g), if the petition is sought under section 543.7, NHTSA notifies the petitioner in writing of the agency's decision to grant or deny the exemption petition.

This grant of petition for exemption considers BMW of North America, LLC's (BMW) petition for its Toyota Supra vehicle line beginning in MY 2022. BMW's petition is granted under 49 U.S.C. 33106 and 49 CFR 543.8(c), which state that if the Secretary of Transportation (NHTSA, by delegation) does not make a decision about a petition within 120 days of the petition submission, the petition shall be deemed to be approved and the manufacturer shall be exempt from the standard for the line covered by the petition for the subsequent model year. Separately, based on the information provided in BMW's petition, NHTSA has determined that the antitheft device to be placed on its vehicle line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking

¹ 49 U.S.C. 33106(d).

requirements of the theft prevention standard.

I. Specific Petition Content Requirements under 49 CFR 543.6

Pursuant to 49 CFR part 543, Exemption from Vehicle Theft Prevention, BMW petitioned for an exemption for its specified vehicle line from the parts-marking requirements of the theft prevention standard, beginning in MY 2022. BMW petitioned under 49 CFR 543.6, Petition: Specific content requirements, which, as described above, requires manufacturers to provide specific information about the antitheft device installed as standard equipment on all vehicles in the line for which an exemption is sought, the antitheft device's capabilities, and the reasons the petitioner believes the device to be as effective at reducing and deterring theft as compliance with the parts-marking requirements.

More specifically, section 543.6(a)(1) requires petitions to include a statement that an antitheft device will be installed as standard equipment on all vehicles in the line for which the exemption is sought. Under section 543.6(a)(2), each petition must list each component in the antitheft system, and include a diagram showing the location of each of those components within the vehicle. As required by section 543.6(a)(3), each petition must include an explanation of the means and process by which the device is activated and functions, including any aspect of the device designed to: (1) facilitate or encourage its activation by motorists; (2) attract attention to the efforts of an unauthorized person to enter or move a vehicle by means other than a key; (3) prevent defeating or circumventing the device by an unauthorized person attempting to enter a vehicle by means other than a key; (4) prevent the operation of a vehicle which an unauthorized person has entered using means other than a key; and (5) ensure the reliability and durability of the device.²

In addition to providing information about the antitheft device and its functionality, petitioners must also submit the reasons for their belief that the antitheft device will be effective

² 49 CFR 543.6(a)(3).

in reducing and deterring motor vehicle theft, including any theft data and other data that are available to the petitioner and form a basis for that belief,³ and the reasons for their belief that the agency should determine that the antitheft device is likely to be as effective as compliance with the parts-marking requirements of part 541 in reducing and deterring motor vehicle theft. In support of this belief, the petitioners should include any statistical data that are available to the petitioner and form the basis for the petitioner's belief that a line of passenger motor vehicles equipped with the antitheft device is likely to have a theft rate equal to or less than that of passenger motor vehicles of the same, or a similar, line which have parts marked in compliance with part 541.⁴

The following sections describe BMW's petition information provided pursuant to 49 CFR part 543, Exemption from Vehicle Theft Prevention. To the extent that specific information in BMW's petition is subject to a properly filed confidentiality request, that information was not disclosed as part of this notice.⁵

In a petition dated November 9, 2020, BMW requested an exemption from the parts-marking requirements of the theft prevention standard for the Toyota Supra vehicle line beginning with MY 2022.

In its petition, BMW provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for its Toyota Supra vehicle line. Under 543.6(a)(3), BMW stated that its Toyota Supra vehicle line will be installed with a passive, electronically-coded, vehicle immobilizer system (EWS) as standard equipment that will prevent the vehicle from being driven away under its own engine power. Key features of the antitheft device will include a remote-control w/high frequency (HF) receiver, mechanical keys, low frequency antenna (LF), radio frequency remote control w/transponder, engine control unit

³ 49 CFR 543.6(a)(4).

⁴ 49 CFR 543.6(a)(5).

⁵ 49 CFR 512.20(a).

(DME) with encoded start release input, transmission control unit (EGS) and an EWS (BDC) control unit. BMW stated that it will not offer an audible or visible alarm feature on the proposed device.

Pursuant to section 543.6(a)(3), BMW explained the means and process by which the immobilizer device is activated and functions. BMW stated that activation of its antitheft device occurs automatically when the engine is shut off and the vehicle key is removed from the ignition system. BMW stated that a transponder (transmitter/receiver) in the radio frequency remote control communicates with the EWS (BDC) control unit providing the interface to the HF receiver, LF antenna and ring antenna, engine control unit and starter. After an initial starting value, the authentication uses the challenge response technique with symmetric secret key. BMW further stated that when the control unit identifies the correct release signal, the ignition signal and fuel supply are released allowing operation of the vehicle. BMW stated that deactivation may not be carried out with the mechanical key, but rather must occur by electronic means.

BMW also stated that the vehicle is equipped with a central-locking system that can be operated to lock and unlock all doors or to unlock only the driver's door, preventing forced entry into the vehicle through the passenger doors. BMW further stated that the vehicle can be further secured by locking the doors and hood using either the key-lock cylinder on the driver's door or the remote frequency remote control. BMW stated that the frequency for the remote control constantly changes to prevent an unauthorized person from opening the vehicle by intercepting the signals of its remote control.

As required in section 543.6(a)(3)(v), BMW provided information on the reliability and durability of its proposed device. To ensure reliability and durability of its device, BMW stated that it conducted tests on the antitheft device which complied with its own specific standards. BMW further stated that its antitheft device fulfills the requirements of the January 1995 European vehicle insurance companies. In further addressing the reliability and durability of its

device, BMW provided information on the uniqueness of its mechanical keys to be used on the Toyota Supra vehicle line. Specifically, BMW stated that the vehicle's mechanical keys are unique because they require a special key blank, cutting machine and a unique vehicle code to allow for key duplication. BMW further stated that the new keys will only be issued to authorized persons and will incorporate special guide-way millings, making the locks almost impossible to pick and the keys impossible to duplicate on the open market.

BMW further stated that all of its vehicles are currently equipped with antitheft devices as standard equipment, including its Toyota Supra vehicle line. BMW compared the effectiveness of its antitheft device with devices which NHTSA has previously determined to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts-marking requirements of Part 541. BMW stated that its antitheft system on the Toyota Supra vehicle line is the same system employed on its existing 2 series vehicle line. BMW also stated that the agency's most recent theft rate data for MY/CY 2014 indicate a minor decrease and downward trend for those vehicles installed with its antitheft device which have been granted parts-marking exemptions by the agency.

III. Decision to Grant the Petition

Pursuant to 49 U.S.C. 33106 and 49 CFR 543.8(b), the agency grants a petition for exemption from the parts-marking requirements of part 541, either in whole or in part, if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of part 541, or if deemed approved under 49 U.S.C. 33106(d). As discussed above, in this case, BMW's petition is granted under 49 U.S.C. 33106(d).

However, separately, NHTSA also finds that BMW has provided adequate reasons for its belief that the antitheft device for its vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the theft prevention standard. This conclusion is based on the information BMW provided about its

antitheft device. NHTSA believes, based on BMW's supporting evidence, that the antitheft device described for its vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the theft prevention standard.

The agency concludes that BMW's antitheft device will provide the four of the five types of performance features listed in section 543.6(a)(3): promoting activation; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

The agency notes that 49 CFR part 541, Appendix A-1, identifies those lines that are exempted from the theft prevention standard for a given model year. 49 CFR 543.8(f) contains publication requirements incident to the disposition of all part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts-marking requirements of the theft prevention standard.

If BMW decides not to use the exemption for its requested vehicle line, the manufacturer must formally notify the agency. If such a decision is made, the line must be fully marked as required by 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if BMW wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Section 543.8(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, section 543.10(c)(2) provides for the submission of petitions "to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in the exemption."

The agency wishes to minimize the administrative burden that section 543.10(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting part

543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be de minimis. Therefore, NHTSA suggests that if BMW contemplates making any changes, the effects of which might be characterized as de minimis, it should consult the agency before preparing and submitting a petition to modify.

For the foregoing reasons, the agency hereby grants in full BMW's petition for exemption for the Toyota Supra vehicle line from the parts-marking requirements of 49 CFR part 541, beginning with its MY 2022 vehicles.

Issued under authority delegated in 49 CFR 1.95 and 501.8.

Raymond R. Posten,

Associate Administrator for Rulemaking.

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